

1970

The 'New' American University

Philip B. Kurland

Follow this and additional works at: http://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

Philip B. Kurland, "The 'New' American University," 51 Chicago Bar Association Record 223 (1970).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

An address delivered before the Quarter-Annual Meeting of the Chicago Bar Association January 22, 1970, by Philip B. Kurland, Professor of Law, The University of Chicago.

The "New" American University

By Philip B. Kurland

PHILIP B. KURLAND, founder and editor of *The Supreme Court Review*, took his undergraduate degree from the University of Pennsylvania and his LL.B. degree at Harvard University School of Law. He joined the faculty of the University of Chicago in 1953, and, in 1956, was named a Professor of Law. Professor Kurland served as chief consultant to the subcommittee on Separation of Powers of the Senate Committee on the Judiciary in 1967.



Those who invited me to speak tonight were unkind enough to leave the choice of topic to me. When I accepted the invitation, I thought I would talk about the "new" Supreme Court of the United States. That exalted body, however, has proved uncooperative. The Burger Court has been most reluctant to render any decisions worthy of comment. I have chosen instead, therefore, what is for me an equally distressing subject: the "new" American university. The similarities of the two problems of the two American institutions that I most revere should become patent to you as I proceed. For my essential concerns about both are with the effects of three recognizable trends. These are the tendencies toward politicization, toward egalitarianism, and toward the

rejection of reason. And I should emphasize that what I shall have to say tonight about the new university is offered more in sorrow than in anger.

For a snapshot—not a full-blown portrait—of the "new" American University, I offer an item from *The New York Times* of about a week or so ago. With your indulgence, I shall read the entire news story. The dateline is West Berlin, Germany:

Twenty-eight professors of the Free University of West Berlin went on strike today in protest against what they described as "student terror." They called a one-week halt to all lectures and other university work.

The strike closed the entire department of economic and social sciences. It followed a series of

disruptions at the lectures of Prof. Bernard Bellinger, an economist whom radical student groups have charged with spreading the doctrine of capitalism.

When the groups disrupted Professor Bellinger's classes again this morning, he walked out and 27 colleagues followed. Last night, they had threatened to do so in the case of new harassment.

Caught between the students and the faculty, was Rolf Kreibich, the University's new 31-year old president, who has pledged to seek reforms. Both sides charged the president, in office since November, with having failed to take action to avert the confrontation.

In an emergency session this afternoon, Mr. Kreibich declared that he was opposed to the practices of the students, but he urged the faculty to meet some student demands, such as appointing as "tutor" a left-wing representative chosen by the students. Professor Bellinger and the other faculty members said that they would resist such a move.

These events in Germany do not reveal a new phenomenon there. For it was probably the parents of these very students who so effectively engaged in these very same tactics toward similar goals in the 1930's. But for American universities, this is a relatively new practice. You must not be deluded by the silence of the press into a belief that this can't happen here. Similar student behavior, similarly motivated, has recently occurred at Columbia, at Yale, at Harvard, even at The University of Chicago. (It was just the other day that a so-called

"moderate" student leader congratulated faculty representatives at one of these universities because the students hadn't brought guns with them to assist their otherwise limited persuasive capacities.)

A certain mythology has developed about the new student movement that is the catalyst in the transformation of American universities, a mythology that derives essentially from the sap that so readily pours forth at commencement exercises. Some of it is classic and can be traced back through commencement speeches for generations past. And, as with most myths, there is an element of truth in it.

Amnesic Generation

We are told that this, *i.e.*, the current student generation, is the best informed group of students that we have ever known. It's a generation with lots of new scientific data and almost no knowledge of history. It is an amnesic generation. And to the extent that they are better informed, it is through information provided them by their predecessors. As has been noted before, even a pygmy can see further than a giant, if he is standing on the giant's shoulders.

It is said that this is the student generation whose morality is somehow higher than those who preceded it, because it is a sincere group. Indeed, sincerity is suggested to be adequate excuse for any misconduct they may indulge. But there are precedents here, too. Theirs is the morality and sincerity that have typified all the zealots that have come before them. Theirs is the morality, for example, of the Spanish Inquisition that sincerely sought to save the souls of men, even

if it had to send them to Hell by fire in the course of making the effort toward reform. It is a morality that justifies its admittedly miserable means by its allegedly enlightened ends. The fact is that this student generation is not a righteous group, only a self-righteous one.

Finally, the myth has it, that the recalcitrants among the students are only a small number of the student population. And this, too, is true, if the only ones to be counted are those active in using force to impose their wills. But if one looks to the numbers who are either sympathetic to or apathetic about such behavior, the proportion is very high indeed. One looks in vain for student opposition to the destructive activities of their colleagues. For the fact is that a very large number of students are in sympathy with the goals of the so-called student movement.

It is, perhaps, also necessary to say that there are many legitimate complaints to be made about the workings of American universities, legitimate in the sense that they reveal the failure of universities to seek their announced objectives. It is true that many professors—frequently those most vocal on behalf of the student movement—don't have time for teaching students. It is true that foundation and government grants have skewed faculty research so that, in many instances, they represent choices not by individual professors but by those who control the purse strings. It is true that much university education is irrelevant, not only to the students' aims, but even to the classically professed goals of a university. It is true that universities either require or permit

an inordinate amount of time to be spent by students at school in order to earn a license to practice a trade or profession. It is true that universities have been unduly tolerant of faculty and student mediocrity. But these defects are not the ones at which student reform is directed. And, indeed, to the extent that universities are moving to correct these deficiencies, the student movement affords a barrier and not an aid.

Nor should the blame for the students' excesses be placed solely at the feet of the students. For university faculties are, like the students, either sympathetic to, acquiescent in, or apathetic about such student behavior and its consequences.

Politicization of the University

The first objective of the new university movement, as I read it, is the politicization of the university. This has both internal and external aspects. At the highest—most abstruse—level this means the attempt to capture the university as a pressure group to affect national policies. At this level, the objective is ludicrous, for it is grounded on two absurd premises. First, that the university is a monolith, indeed that all universities combined are monolithic. Second, that universities are capable of being a strong pressure group for bringing about change in national policy about anything. The effect of university pressure on national policy is indeed immeasurable if not nonexistent. This is not to deny that some inhabitants of the groves of academe have individually played important political roles. It is to deny the equation between individual faculty members and their universities.

At a more mundane level, the new university objective is to force the universities to utilize their resources for social improvement in the communities in which they are located: to house the ill-housed, to feed the hungry, to provide medical, legal, and recreational facilities to those who need them, to provide elementary education for illiterates, and so on. These are certainly worthy goals. But even the total resources of the universities are inadequate to these ends. Any partial commitment of university resources to these goals means that they have to be taken from the other functions that a university performs, essentially the gathering and communication of knowledge by those best able to make the discoveries and those best able to utilize them. Indeed, if the universities do not die by the sword of the new university movement, they may well disappear for lack of financial sustenance.

The problem of internal politicization is equally taxing on the primary functions of the university as we have known it. The objective here is to treat a university as if it were a governmental body which must be democratized to be legitimized. But the function of university governance is not the exercise of power. The function of university governance is the provision of services that make it possible for scholars to research, for teachers to teach, and for students to learn.

It used to be asserted that the trouble with the new student generation was its belief that no decisions of a university or any other institution were made on principle; that all decisions were made in response to pres-

sure. To disprove the contention academics would cite the exemplary behavior of many universities in their successful efforts against the pressures of the late, unlamented Senator McCarthy and his epigone to dictate who shall be employed at what tasks in a university. At the same time, the fact is that the universities are now beginning to demonstrate that the student attitude is correct, by their response to the pressures of these students. Politicization has already occurred.

Let us take a couple of current examples. For years, the Department of Defense has supported medical research into the cause and cure of specified diseases. And university medical schools were eager and willing to use the money supplied for these purposes. Under new law, sponsored by Senator Fulbright among others, the Department of Defense must certify that any research moneys that it spends are spent for projects directly connected with defense goals. It is suggested now, because the Department of Defense is prepared to certify certain medical research in this manner, that the universities must reject the funds because the research is suddenly tainted. This taint means only that many on campus would object—without knowledge or interest in the substance of the research effort—because of the Defense Department label that it bears.

One would think that the merits of the research or its proper place in a university would remain the same whatever the certification of the Department of Defense. When university administrators decide that the kinds of research it can undertake shall be

determined by consensus on campus—or even worse by consensus among those who might otherwise make trouble, it has abdicated to the new McCarthyism even as it refused to surrender to the old McCarthyism.

Again, if, as has been suggested, a university must reject research into genetic differences between Blacks and whites, because the product of such research might contradict some of the dearest values asserted by some members of the university community, the university is proving, not disproving, that political values are determinative of the university's behavior. When these hypotheticals become facts, the university is no longer engaged in the search for knowledge. It is then seeking proof only of the dogma of the disciples of modernity, and dogma, of course, needs no proof. You know in your hearts when it is right. As this pattern of pandering to loudly voiced opinions emerges, it seems clear that the university has already succumbed to politicization. And those university presidents who are enjoying—according to *The New York Times*—the peace that has descended on campuses during this academic year might recognize that it has been bought at the price of surrender.

Concept of Egalitarianism

One part of the dogma of the “new” university is its concept of egalitarianism. An “egalitarianism [which] denies that there are inequalities in capacity, eliminates the situations in which such inequalities can exhibit themselves and insures that, if such differences do emerge, they will not result in differences in status” [John Gardner.] Thus,

students must be admitted without regard to their demonstrated intellectual capacities. Students must not be graded because this results in invidious comparisons between those who have performed well and those who have not. Faculty members must be hired or retained not because they have shown capacities for research and teaching in a given area, but because we must assign appropriate egalitarian quotas by sex, by race, by political persuasions, and—in remembrance of things past—by religion. Moreover, the judgment about faculty capacity is not to be made by those knowledgeable in the field, but by students, in terms of how they “relate” to the faculty member—him or her or it, as the case may be.

It is this egalitarianism that bottoms the claim of students to participate in the governance of the university. The fact that they indicate no knowledge of the function of university governance is irrelevant. It is argued that, when they are admitted to the university community as students, they have been judged competent to share in university administration. They are, indeed, right, if their concept of a university as an egalitarian political institution is accurate. Only if the old-fashioned notion were to prevail that a university is a place exclusively for the discovery and communication of knowledge by those best qualified to perform those tasks should the student claim for a share in university government be rejected.

The proponents of the new university are riding a tide of egalitarianism that is sweeping before it not only the university but many other institutions. We are beyond Gertrude Stein's “a

rose is a rose is a rose." We are arrived at the point where a dandelion is also a rose, however different it looks or smells. But universities have been particularly vulnerable to the equalitarianism that is being proffered because of the use to which the universities' pseudo-sciences have long been putting the science of statistics. We have come to see the truth of Thomas Reed Powell's description of the new knowledge as a science in which counters don't think and thinkers don't count. By reducing humans and human activities to statistics, we provide fodder for computers. By reducing humans and human activities to numbers, the new men make them fungible. They are no longer individual; they are no longer human.

In his recent book, *The Decline of Radicalism*, Professor Boorstin, suggested the sway that the statistical age has imposed on us. "It is no wonder that statistics, which first secured prestige here by a supposedly impartial utterance of stark fact," he said, "have enlarged their dominion over the American consciousness by becoming the most powerful statements of the 'ought'—displacers of moral imperatives, personal ideal, and unfulfilled objectives." For all the ridicule heaped by them on President Johnson, the new university men would reduce the university community to governance by consensus.

The most obvious victims of this egalitarianism in the university community are its notions of individuality and excellence. Individuality and the consequent freedoms of the individual are anathema to the egalitarianism of the new university which requires, in Learned Hand's words, that "relations

become standardized; to standardize is to generalize, and to generalize is to ignore all those authentic features which mark, and which indeed alone create, an individual. . . . The herd is regaining its ancient and evil primacy; civilization is being reversed, for it has consisted of exactly the opposite process of individualization."

Excellence, too, is a quality totally inconsistent with the egalitarian ethos as expounded by the new university men. The dirtiest words in their lexicon are "elite" and "professional." Any suggestion of special capacities derived from intellect and training is inconsistent with the new dogma. And, under such circumstances, there surely is no place for the old kind of university which put a premium on high intellectual attainment and sought to make it a goal.

Rejection of Life of Mind

Perhaps the clearest conflict between the new and the old is to be found in the new university men's rejection of the life of the mind, of the uses of reason. As part punishment for my sins as an elected member of a university faculty's consultative body, I had the dubious privilege of visiting a building just evacuated after a sit-in by some of the new university men. The descriptions that you have read elsewhere—only the other day about the building seized at M.I.T.—should suffice for any man's taste. What I found most horrifying was not the evidences of defecation in the offices and halls, not the wanton destruction of equipment and furniture, not the stench and the mess, but the slogans painted everywhere which called—in language somewhat more picturesque

than mine—for the destruction of “the life of the mind.” For it is here that the “new” university makes clear its incompatibility with the old university.

The life of the mind is the focus of the old university. It is only engagement in the rational testing of ideas new and old that justifies the old university’s existence. In President Levi’s words: “Universities . . . have kept alive the tradition of the life of the mind. . . . It is an approach to education which emphasizes the magic of a disciplined process, self-generating, self-directing, and free from external constraints. An approach which requires an independence of spirit, a voluntary commitment. It forces the asking of questions. It is not content with closed systems. It is not committed to the point of view of any society. It does not conform to the ancient and now modern notion that education is here to carry out the ideas and wishes of the state, the establishment, or the community. Thus, it is opposed to the view that education is good if properly controlled.”

One of Goya’s etchings bears the inscription: “The sleep of reason brings forth monsters.” In the “new” university, cause and effect are reversed. Monsters threaten to bring forth the

sleep of reason. And, as C.P. Snow said in his recent novel with the title borrowed from Goya: “Put reason to sleep, and all the stronger forces were let loose. We had seen that happen in our own lifetimes. In the world; and close to us. We knew, we couldn’t get out of knowing, that it meant a chance of hell.” And here lies the essence of the generation gap. For the young have not seen reason put to sleep and more primitive forces unleashed except on an individual basis.

Conclusion

Whether the “new” university with its preference for instinctual forces over reason, with its preference for egalitarianism over individuality, excellence, and professionalism, with its preference for political rather than intellectual objectives—whether the “new” university will prevail over the old is not yet fully determined. But the odds are in its favor. For there are too few to stand up and fight against the perversions that are promised. Too few students; too few faculty; too few university administrators. Those among them who do not endorse the “new” university prefer to compromise with it. Once again, the price of peace in our time may prove exorbitant.

PROFESSIONALS, ASSOCIATED:

new road to professional retirement?

By conducting their practice in the association form, professional men and women may achieve numerous practical and tax benefits long reserved for corporate employees. Some imponderables remain, but many believe that the time to start is *now*.

The opportunities—and the obstacles—are discussed in detail in the Winter '70 issue of Harris Trust's ESTATE PLANNING STUDIES. If you are a practicing Illinois attorney, we'll be pleased to send you this informative quarterly publication, along with our monthly ESTATE PLANNING BRIEFS. Just write on your letterhead to William A. Thuma, Jr.

HARRIS *Trust and Savings* **BANK**

111 West Monroe St. • Chicago, Illinois 60690

Member FDIC



**that's
Harris
savvy**

